No.

In the

Supreme Court of the United States

JASON J. MONT

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a statute directed to the administration of imprisoned individuals serves as authority to alter or suspend the running of a criminal sentence of supervised release, when such "tolling" is without judicial action, and requires the term "imprisonment" as used in the administrative statute, to include pretrial detention prior to an adjudication of guilt. Is a district court required to exercise its jurisdiction in order to suspend the running of a supervised release sentence as directed under 18 U.S.C. §3583(i) prior to expiration of the term of supervised release, when a supervised releasee is in pretrial detention, or does 18 U.S.C. §3624(e) toll the running of supervised release while in pretrial detention?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jason J. Mont respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in this case. This case represents a clear divide within the courts of appeals as to the interpretation and application of 18 U.S.C. §3624(e) to causes where a supervised release violation is contemplated based upon a releasee's conduct, but that releasee is being held in pretrial detention based upon an unrelated charge. The Sixth Circuit, along with the Fourth, Fifth, and Eleventh Circuits view pretrial detention as "imprisonment" for purposes of applying the alleged tolling provision of §3624(e), and finc' it unnecessary for the district court to follow the jurisdictional requirements under 18 U.S.C. §3583(i) which allow for extending jurisdiction beyond the end of a supervised release sentence term were a summons or warrant is issued for the pending violation. The Ninth Circuit and the District of Columbia Circuit, however, view the term "imprisonment" in the present tense, and requires an actual imprisonment term as opposed to a pretrial detention term that is later credited to a prison term after conviction on the unrelated charge which was the basis of the pretrial detention.

The federal circuit courts are openly divided and steadfast in the belief that their reasoning is correct. As a consequence, sentences of supervised release which are nearing the end of their terms are being treated differently depending upon the part of the country a federal supervised releasee is being supervised. Without this court's intervention, the lack of a consistent and coherent interpretation of the word

"imprisonment" as used in 18 U.S.C. §3624(e) will continue to produce inconsistent and incompatible interpretation of clear statutory language, with clear implications as to how a district court exercises its jurisdiction depending upon the location of the court. This case squarely presents these important and recurring questions and is an ideal vehicle for resolving the split of authority. For these reasons, the petition should be granted.

OPINION BELOW

The opinion of the Sixth Circuit Court of Appeals, Appendix, 1a- 13a, was unpublished and issued February 15, 2018, and is attached hereto.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The Questions Presented implicates the following United States Code sections. The full text of these provisions have been set out in the Appendix.

> 18 U.S.C. § 3583. Inclusion of a term of supervised release after imprisonment
>
> (i) Delayed revocation.--The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

18 U.S.C. §3624. Release of a Prisoner

(c) Supervision after release.--A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

STATEMENT OF THE CASE

A. Factual History of Supervised Release of Jason Mont

The facts involved in Petitioner Jason Mont's supervised release and the history of violation reports is not in dispute.

Jason Mont was released from the custody of the Bureau of Prisons on March 6, 2012, after serving a 120-month sentence for violations of 21 U.S.C. §841(a)(1) & (b)(1)(A) and §846, imposed by United States District Court Judge Patricia Gaughan on December 8, 2005. Mont began his five year supervised release sentence on March 6, 2012, and was supervised in the Northern District of Ohio.

During the term of supervised release, Mont's probation officer filed two violation reports and one supervision report, all of which served to notify the district court of the alleged violative activities of Mont. The first Violation Report, which was subtitled "Warrant/Summons Request" was dated January 28, 2016, after Jason Mont had been serving the supervised release portion of his sentence for almost four years. In the January 2016 Violation Report, it was noted that Mont was serving a five year supervised release term, which began on March 7, 2012. The January 2016 Report also requested a warrant to issue for Mr. Mont, based upon two alleged violations of his supervision: the first was an Unauthorized Use of Drugs violation; the second violation was for Adulterated Urine Samples. At the time of the January 2016 violation report, Mont was under indictment in Mahoning County, Ohio Common Pleas Court for marijuana drug trafficking. United States District Court Chief Judge Patricia Gaughan declined to issue the requested warrant. Notwithstanding the refusal to issue the warrant for Mont, Chief Judge Gaughan requested notification when the pending marijuana trafficking case in state court was concluded.

The next report from the probation officer was dated June 13, 2016, and was titled "Supervision Report," which was issued for informational purposes only, and requested continued supervision. The June 2016 Supervision Report updated the district court on the status of Jason Mont's Mahoning County drug case, and a recent arrest of Mont on a new drug trafficking indictment. Jason Mont had been arrested and held in pretrial detention on June 1, 2016, following a five count secret Indictment from Mahoning County, alleging violation of Ohio's drug trafficking statutes. Mont

would not be granted a bond on the new indictment, and from June 1, 2016 to the present, Jason Mont has been in the custody of the State of Ohio. The June 2016 supervision report did not ask for any judicial action, as it was a status report, used to keep the court abreast of the activities and supervision of Jason Mont.

Jason Mont pled guilty to the state consolidated cases, and thereafter filed in his 2005 federal case a concession which admitted his violations of supervised release, and requested a hearing to resolve the potential violations in November of 2016. The district court scheduled a hearing, but did not issue a summons, warrant, or writ for Mr. Mont, who was still being held in pretrial detention at Mahoning County Jail in Youngstown, Ohio. The scheduled hearing was continued on several occasions by the government, as counsel for the United States wanted to wait until Mr. Mont was sentenced on the state law crimes prior to any supervised release violation hearing. During this four month delay, no summons, warrant, or writ was filed by the government or the district court, and no violation report was filed or served until March 30, 2017.

The third Report generated by the United States probation officer was dated March 30, 2017, and was a Violation Report and Request for a Warrant. The March 2017 Report provided the district court with an update as to the status of the state court cases, as Mr. Mont had been sentenced on March 21, 2017 in Mahoning County Common Pleas Court, and was given credit for time served since his June, 2016 arrest on the second Mahoning County indictment. The Mahoning County cases had been consolidated, and Mr. Mont had received a six year concurrent sentence on the two

separate state court indictments. Jason Mont had not been held in pretrial detention for the first Mahoning County indictment dating back to 2015.

Judge Gaughan issued a warrant after the filing of the updated Report, on March 31, 2017. However, Mont's five year supervised release sentence, which had begun on March 6, 2012, had expired on March 7, 2017, over three weeks prior to the Violation Report, and 24 days prior to the issuance of the warrant based upon the violations. The district court refused to exercise jurisdiction over Mont prior to the expiration of the supervised release term, notwithstanding the violation reports filed and Mr. Mont's request for a hearing prior to the expiration of the sentence.

Mont filed a Memorandum in aid of Proceedings on Supervised Release Violation Hearing, which argued, among other things, that Mr. Mont's supervised release sentence had expired prior to the issuing of the warrant on March 31, 2017, and thus the district court lacked jurisdiction to adjudicate the alleged violations. At the June 28, 2017 supervised release violation hearing, the district court addressed the jurisdiction issue regarding the expired term of supervised release. The government averred that Mont caused the delay and Sixth circuit precedent cautioned that a defendant that causes a delay cannot benefit from the expiration of the sentence, which would not have expired absent the delay. The probation office opined that because an individual held in pretrial detention is not amenable to supervision, pretrial detention pauses, or stops the running of supervised release.

The district court decided to rely on a different justification for the alleged tolling of the supervised release term. The district court (incorrectly) stated that a

summons had been filed in November of 2016, and relied upon 18 U.S.C. §3583(i) in finding that the period between the plea of guilty to the state indictments until the June 28, 2017 hearing was time "reasonably necessary" to adjudicate the violations, as Mr. Mont had delayed his state court sentencing by seeking continuances of his state court sentencing hearing, and those delays were his own doing and thus caused the excusable delay. Therefore because of the summons and the delay caused by Mont, §3583(i) permitted the court to retain jurisdiction after the expiration of the supervised release sentence. The district court sentenced Mont to 42 months imprisonment, with no supervised release to follow. The sentence was imposed to run consecutively to the six year State of Ohio sentences for the two Mahoning County indictments.

B. The Decision Below

The Sixth Circuit Court of appeals affirmed the sentence and the district court's exercise of jurisdiction, albeit on a basis different than that espoused by the district court. The Court of Appeals stated that their prior published opinion in United States v. Goins, 516 F.3d 416 (6th Cir.2008) resolved the jurisdictional issue and foreclosed Mont's argument. The court held that under 18 U.S.C. §3624(e), "while a 'term of supervised release commences on the day the person is released from imprisonment, that term does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.' " Pet. App. 6a.

The appeals court identified both §3624(e) and 18 U.S.C. §3583(i) as "clock-pausing provisions" addressed in Goins, and in relying on that earlier 2008 decision,

stated the Goins holding, specifically, "when a defendant is held for thirty days or longer in pretrial detention, and he is later convicted for the offense for which he was held, and his pretrial detention is credited as time served toward his sentence, then the pretrial detention is "in connection with" a conviction and tolls the period of supervised release under § 3624," was controlling. Pet. App. 7a, citing, Goins, 516 F.3d at 417.

The Mont panel recognized that Goins, a published and binding decision, led the way for three other Courts of Appeals to follow suit, finding that 18 U.S.C §3624(e) is a tolling provision for a criminal sentence of supervised release. "Compare United States v. Ide, 624 F.3d 666, 667 (4th Cir. 2010) (holding that pretrial detention can qualify as imprisonment under § 3624(e)), United States v. Johnson, 581 F.3d 1310, 1312–13 (11th Cir. 2009)(same), United States v. Molina-Gazca, 571 F.3d 470, 471 (5th Cir. 2009)(same)." Pet. App 11a. The court then acknowledged the split in the circuit opinions as reflected in United States v. Marsh, 829 F.3d 705 (D.C. Cir.2016), and United States v. Morales-Alejo, 193 F.3d 1102 (9th Cir.1999), which hold that pretrial detention is not "imprisonment" and thus §3624(e) does not toll the running of a sentence of supervised release for a pretrial detainee. Pet. App. 11a.

REASONS FOR GRANTING THE WRIT

The Sixth Circuit's unpublished decision in United States v. Mont, reflects a clear circuit split based upon differing statutory interpretations of 18 U.S.C. §3624(e), which requires resolution. The federal courts of appeals are firmly divided over the interpretation of the language of 18 U.S.C. §3624(e), the use of the word "imprisonment," and whether the backward-looking practice required to be performed by those circuits who adhere to the idea of tolling in §3624(e) is practicable or appropriate, given the clear manner in which jurisdiction over a supervised release case shgould be invoked as stated in 18 U.S.C. §3583(i). This case squarely presents this important and recurring question, and is an ideal vehicle for which this Court may answer the jurisdictional issue. This Court should therefore use this case to resolve the conflict in the circuit courts.

1. The Question Presented has Divided the Courts of Appeals

Half of the federal circuit courts have addressed the question presented and have reached opposite conclusions. The circuit courts have acknowledged the differing analysis, and serves as additional inspiration to resolve these percolating issues of jurisdiction and statutory interpretation. See, e.g., Pet. App. 11a ("What remains of Mont's argument amounts essentially to an attack on Goins itself and an endorsement of the D.C. Circuit's recent decision to the contrary, . . . That is fair enough: there is indeed a circuit split on this question."); United States v. Marsh, 829 F.3d 705, 707 (D.C. Cir. 2016)("Whether section 3624(e) tolls a term of supervised release during a period of pretrial detention where the defendant is ultimately convicted of the charges

on which he is held is a matter of first impression in this circuit. Five other circuits have, however, considered the issue and are split."). This Court's resolution is now warranted to provide clarity and focus to these differing statutory interpretations.

A. The District of Columbia and Ninth Circuits have both held that section 3624(e) does not toll a supervised release sentence as "imprisonment" does not include periods of pretrial detention

In United States v. Morales-Alejo, 193 F.3d 1102 (9th Cir.1999), the Ninth Circuit panel held that in the context of 18 U.S.C. §3624(e), pretrial detention is not "imprisonment" and thus any supervised release term would not be subject to tolling based upon the person's detention pending new charges. The Ninth Circuit pointed out that the terms "imprisonment" and "detention" are used differently in federal criminal statutes, with "imprisonment" referring to a penalty or sentence, and "detention" being used to describe a mechanism to insure a defendant's appearance and the safety of the community. Morales-Alejo, 193 F.3d at 1105. The Ninth Circuit rejected the government's attempt to equate sentence credits given at the time of sentencing for time spent in pretrial detention as being unsupported by the statutory language, and involving a type of "backward-looking" analysis not contemplated by Congress. In addition, in the federal context, pretrial credits are provided for by the Bureau of Prisons as part of the sentencing computation duties, and thus may not be know specifically until well after a judge pronounces sentence. Morales-Alejo, 193 F.3d at 1105-1106.

The District of Columbia Circuit Court has also determined that pretrial detention does not apply to tolling of a supervised release term under 18 U.S.C.

§3624(e), albeit for reasons related to those as decided in Morales-Alejo. In United States v. Marsh, 829 F.3d 705 (D.C. Cir.2016), the circuit court found that the language of 18 U.S.C. §3624(e) is based in the present tense, which removes the possibility of the backwards-looking method of statutory tolling advocated in the Sixth Circuit and those circuit courts which followed the Sixth Circuit's reasoning.

The Marsh Court determined that Congress's use of the present tense matters, as this Court has "frequently looked to verb tense to ascertain the meaning of statutes. See, e.g., Carr v. United States, 560 U.S. 438, 447–49, 130 S.Ct. 2229, 176 L.Ed.2d 1152 (2010) (relying on Congress's use of the present as opposed to the past or present perfect tense to conclude that a statute should be given a "forward-looking construction"); United States v. Wilson, 503 U.S. 329, 333, 112 S.Ct. 1351, 117 L.Ed.2d 593 (1992) ("Congress' use of a verb tense is significant in construing statutes.")" Marsh, 829 F.3d at 709. The Marsh panel observed that "The phrase "in connection with a conviction" [in §3624(e)] clarifies that the statute does not toll a term of supervised release any time the person "is imprisoned" or confined by the state, but rather only during those periods in which the person's imprisonment is triggered by a conviction." Id. at 710.

The District of Columbia Circuit found that the interpretation adopted in its opinion and in the Ninth Circuit's decision in Morales-Alejo makes the most sense, given that the analysis used in the Sixth Circuit's opinion in Goins is fraught with contingencies and looking back, which makes a district court's jurisdiction contingent on future events, and creates unfairness toward defendants who are unclear as to

whether they continue to be subject to the court's supervision. Marsh, 829 F.3d at 710. Finally, the Marsh opinion reflected the argument presented by Petitioner below, namely, that had the district court followed the applicable supervised release revocation procedural statute at 18 U.S.C. §3583(i), no tolling was necessary: "Under section 3583(i), a district court may address a supervised-release violation after the end of a supervised-release term if a warrant or summons issues prior to that term's expiration. 18 U.S.C. § 3583(i). That process—not followed here—provides fair notice to the defendant and certainty for all." Id.

B. The Fourth, Fifth, Sixth and Eleventh Circuits hold that pretrial detention tolls the running of a supervised release sentence, so long as that detention is eventually credited at some time in the future as time served on a conviction which was the reason for the pretrial detention

The first published opinion to adopt the reasoning used to deny relief for Petitioner Mont was United States v. Goins, 516 F.3d 416 (6th Cir.2008). Both opinions in United States v. Goins and United States v. Mont were authored by Sixth Circuit Court of Appeals Judge Karen Nelson Moore. The issue of the application of the "tolling" provision of 18 U.S.C. §3624(e) to pretrial detention was a matter of first impression for the Sixth Circuit when decided in 2008, and the Goins opinion acknowledged its split from the prior Ninth Circuit holding in Morales-Alejo. Goins, 516 F.3d at 417. The decision in Goins reflected a results-oriented approach to resolving a case where the court of appeals did not wish to "reward" a defendant for absconding from supervision.

Throughout the opinion, the Goins panel minimized the effect of its decision to find that pretrial detention later credited to a term of imprisonment tolled the running of supervised release and thus extended the term past its scheduled expiration: "We recognize that uncertainty may pose a real problem, yet we believe that the severity of this problem is likely overstated. The only time when such indeterminacy would exist is when a judge must determine whether jurisdiction for the revocation of supervised release exists and the defendant is between the period of his pretrial detention and the conclusion of his trial." Goins, 516 F.3d at 423. Even the Goins court acknowledged that a warrant or summons filed at the time of his detention or absconding as instructed under section 3583(i), would have obviated the need for the statutory gymnastic backflip under §3624(e) to find pretrial detention is mutable after the fact: "First, most absconders, by absconding and failing to report to their probation officers, would find themselves the subject of a warrant for arrest for a violation of the conditions of their supervised release. It is likely such a warrant would have been issued here had the Northern District of Ohio and the Western District of Kentucky not so completely failed in their monitoring of Goins." Id at 424.

The Fifth Circuit's opinion in United States v. Molina-Gazca, 571 F.3d 470 (5th Cir.2009) purported to look to the plain statutory meaning of §3624(e) to find that "[i]f the term "imprisonment" only refers to confinement that is the result of a penalty or sentence, then the phrase within § 3624(e), "in connection with a conviction," is superfluous. . . . Pretrial detention falls within "any period in which the person is imprisoned" and tolls the period of supervised release, provided a conviction ultimately

occurs. This plain meaning interpretation of § 3624(e) gives effect to all of its terms." Id. at 474, (internal citations omitted). The Fifth Circuit opinion failed to account for imprisonment in connection with civil contempt proceedings, immigration detainers, and other non-criminal situations where "imprisonment" may occur. Therefore, it appears that the Fifth Circuit does not require the imposition of a future sentence with credit for pretrial detention to be synonymous with "imprisonment," as did the Sixth Circuit in Goins.

The Fourth Circuit in United States v. Ide, 624 F.3d 666 (4th Cir.2010) followed the opinion in Goins, and held that a defendant's term of supervised release is tolled during pretrial detention that is later credited to the sentence based upon the charges which caused the pretrial detention in the first instance. Id. at 669.

2. This case is an Ideal Vehicle for Answering the Question Presented and Resolving the Conflict.

Petitioner states that his case is an ideal opportunity to correct and clarify the meaning and application of 18 U.S.C. §3624(e) to supervised release, where an individual is in pretrial detention and the government seeks to act on the supervised release after the expiration of the term. This case is perfectly poised to address the issue in light of its history, as this is not a case where the probation office failed to monitor a releasee as in Goins. Indeed, the district court had many opportunities prior to Mont's pretrial detention in June of 2016, and during his detention in Mahoning County Jail to issue a warrant based upon the many violations alleged by the probation officer and in light of his pleas of guilty to the two state court indictments

in October of 2016, well before the expiration of his five year supervised release term on March 7, 2017. Because the district court failed to exercise jurisdiction as instructed in the supervised release statute, 18 U.S.C. §3583, despite opportunities to do so, the use of section 3624(e), a statute that involves the release of prisoners and is the administrative directive from Congress to the Attorney General and the Bureau of Prisons, is particularly problematic.

The frequency of recurrence also lends this case as a prime vehicle to correct the faulty interpretations of the statute. There are many individuals on supervised release, and there are many violations of state law that have cause those supervised releasees to be detained. Particularly the large influx of released persons after this Court's decision in Johnson v. United States, __ U.S. __, 135 S.Ct. 2551 (2015) has caused an uptick of supervised release violations in the Northern District of Ohio, and around the Nation. This issue as to the running of supervised release during pretrial detention, the applicability of the statute to the preservation of jurisdiction, and the interpretation of the language of the statute will continue to be an issue which has shown sharp divisions in interpretation of the applicable statutes. Based upon all of these reasons, Petitioner submits that this case is the perfect vehicle for resolving the circuit split and the split in statutory interpretation.

3. The Sixth Circuit Erred in Holding that Section 3624(e) Applies and Affects the Jurisdiction of a District Court and Tolls the Running of the Supervised Release Term

The Sixth Circuit relied upon Goins to reject Petitioner's argument that the district court lacked jurisdiction to revoke his supervised release term, as the term had expired three weeks prior to the issuance of the violation warrant. Goins was decided based upon the premise that 18 U.S.C. §3624(e) is a procedural statute that dictates the district court's supervisory power over supervised releasees. However, that case, and those cases which follow Goins, do not acknowledge that §3624(e) does not affect the jurisdiction of the court to revoke supervision, which is governed by 18 U.S.C. §3583, and instead is a directive to the Bureau of Prisons when calculating credit for imprisonment and release.

Title18 United States Code §3624(e), is a statute which is located in Chapter 229 of Part II – Criminal Procedure of the United States Code. Section 3624, titled Release of Prisoner, generally directs the Attorney General and the Bureau of Prisons as to their duties and authority over the prisoner throughout incarceration and prerelease custody. Section 3624 is a part of Chapter 229, Subchapter C, a section of the Code entitled Postsentence Administration. This Chapter, separated into three subchapters, instructs the administration of individuals sentenced to probation in Part A; instructs method of collection of fines for those defendants whose sentence includes a fine, in Part B, and in Part C, the subchapter instructs how a sentence of imprisonment is to be administered. None of these provisions in Chapter 229 instruct how a district court,

in consideration and administration of a supervised releasee, is to notify, conduct, or sentence a defendant found in violation of their supervised release terms. Section 3624, titled "Release of a Prisoner," is clearly directed to post incarceration administration, including when and how a prisoner is released from imprisonment, not the authority to toll a sentence imposed by a district court judge.

There are mechanisms for district courts to use when a person on supervised release is detained, in order to preserve the district court's jurisdiction over that individual, to protect the district court's ability to adjudicate a violation of the terms of supervised release. The district court failed to exercise is jurisdiction through no fault of Petitioner, and that failure caused the five year supervised release term to expire. No backward-looking tolling provisions under section 3624(e) are able to resurrect the power of the district court to act beyond the expiration of the supervised release sentence's expiration.

CONCLUSION

The Court should grant this petition for a writ of certiorari

Respectfully submitted,

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APPENDIX A

United States v. Jason Mont
Sixth Circuit Court of Appeals Case No. 17-3732

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No. 17-3732

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA, **Plaintiff-Appellee,** v. JASON J. MONT, **Defendant-Appellant.**	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

OPINION

Before: MOORE, COOK, and McKEAGUE, Circuit Judges.

KAREN NELSON MOORE, Circuit Judge. Defendant-Appellant Jason Mont appeals the district court's revocation of his term of supervised release, arguing that the district court lacked jurisdiction to impose the revocation because his term of supervised release had already expired. Because binding precedent instead makes clear that Mont's term of supervised release was paused by his imprisonment in connection with a new state conviction, we conclude that the district court did indeed have jurisdiction and thus **AFFIRM**.

I. BACKGROUND

Because Mont's challenge hinges on a few key dates, two sections of statutory text, and one case, we review the facts here only briefly. In December 2005, Mont was convicted of violating 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, and 18 U.S.C. § 922(g)(1), and sentenced to 120 months of imprisonment to be followed by five years of supervised release. R. 37 (2005 Crim. J. at 1–3) (Page ID #109–11). He appears to have been released from prison on March 6,

2012. *See* R. 90 (Supervision Report at 1) (Page ID #415); *see also* Inmate Locator, FEDERAL BUREAU OF PRISONS, https://www.bop.gov/inmateloc/ (listing a release date of "03/06/2012" after a search for "Jason J. Mont"); Appellant's Br. at 4; Appellee's Br. at 4. His release from prison started the clock ticking on his five years of supervised release, *see* 18 U.S.C. § 3624(e)—a countdown slated to end on March 6, 2017.[1]

Unfortunately, that five-year period was not a smooth one for Mont. In January 2016, his probation officer submitted to the district court a violation report alleging that Mont had failed to comply with the terms of his supervised release in two ways: (1) by testing positive during two drug tests for controlled substances (Oxycodone and Oxymorphone) for which he lacked a prescription, and (2) by using some "unknown" liquid to try to pass two subsequent drug tests. R. 89 (First Violation Report at 1) (Page ID #411). Moreover, Mont's probation officer noted, Mont had been "secretly indicted by the Mahoning County Grand Jury on two counts of Trafficking in Marijuana" back in March 2015. *Id.* At the time of the probation officer's report, those state charges were still pending, and a jury trial was scheduled for March 14, 2016. *Id.* at 1–2 (Page ID #411–12). In light of the pending state-court case, the district judge declined to issue a warrant, and instead asked that the court "be notified of the resolution of the state charges." *Id.* at 4 (Page ID #414).

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[1]Or possibly March 7, 2017. *Compare* R. 90 (Supervision Report at 1) (Page ID #415) (March 6), *with* R. 89 (First Violation Report at 1) (Page ID #411) (March 7), *and* R. 100 (Second Violation Report at 1) (Page ID #454) (same). But as the Government concedes, "[t]he one-day difference does not affect the outcome here." Appellee's Br. at 4 n.1. Both to give Mont the benefit of the ambiguity and because March 6 appears more accurate, we use that date here.

Mont's state jury trial ended up being postponed. R. 90 (Supervision Report at 1) (Page ID #415). Nevertheless, as his probation officer reported, Mont was arrested on June 1, 2016, as a result of a new secret indictment from Mahoning County, this one for "five counts of Trafficking in Cocaine." *Id.* He was "incarcerated in the Mahoning County Jail," *id.* at 2 (Page ID #416), and, as he concedes, remained in state custody going forward, *see* R. 100 (Second Violation Report at 2) (Page ID #455); *see also* Appellant's Br. at 6.[2]

In October 2016, Mont entered into a plea agreement with the Mahoning County prosecutors, pleaded guilty to some of his state court charges in exchange for a predetermined six-year sentence, R. 95-1 (Def.'s Mot. for Continuance, Ex. A) (Page ID #430–38), and filed a written admission in federal court acknowledging that he had violated the terms of his supervised release and requesting a hearing on the matter, R. 92 (Def.'s Admission) (Page ID #419). But Mont had not yet been officially sentenced for the new, state-court convictions. Though the district court initially set a November 2016 date for Mont's supervised-release-violation hearing, a flurry of continuances followed in both state and federal court. *See, e.g.*, R. 94 (Gov't's Mot. for Continuance at 1) (Page ID #424). Ultimately, on March 21, 2017, Mont was sentenced in

[2]Again, there is some minor confusion regarding the particular date. At Mont's revocation hearing in federal court, his probation officer testified that Mont "went into custody on May 26th, 2016, and he remained in custody to this date." R. 116 (Violation Hr'g Tr. at 7) (Page ID #490). But the May 26 date does not appear to be otherwise reflected in the district-court record, and Mont instead cites the June 1 date, *see* Appellant's Br. at 6. (For its part, the Government repeatedly gives the operative date as "March 26, 2016." Appellee's Br. at 5–6, 10, 14–15. That date, also not reflected in the record, is presumably an accidental misrendering of "May" from the probation officer's testimony.) Giving Mont the benefit of the doubt, we treat June 1, 2016, as the beginning of Mont's state imprisonment, noting that Mont's challenge does not hinge on this temporal difference either.

state court to a total of six years' imprisonment, encompassing multiple concurrent terms stemming from the various state charges on which he had been indicted and arrested. *See* R. 100 (Second Violation Report at 1) (Page ID #454). Importantly, Mont's state-court sentencing judge credited the roughly ten months that Mont had already been incarcerated pending a disposition as time served. *See State v. Mont*, Judgment, No. 16-CR-555, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017); *State v. Mont*, Judgment, No. 15-CR-291, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017).[3]

On March 30, 2017—now more than three weeks after Mont's term of supervised release had initially been set to expire—Mont's probation officer updated the district court regarding Mont's state-court convictions and sentences. R. 100 (Second Violation Report at 1) (Page ID #454) (same). The district court ordered the issuance of a warrant that same day, *id.* at 4 (Page ID #457); R. 101 (Arrest Warrant at 1) (Page ID #458), and set a supervised-release-violation hearing for June 28, 2017, R. 103 (Pet. for Writ of Habeas Corpus ad Prosequendum at 1) (Page ID #462).

Two days before that hearing, Mont's counsel filed a memorandum contending that "Mont's period of supervised release expired on March 6, 2017," and thus disputing the district court's jurisdiction to adjudicate his otherwise-admitted violation. R. 107 (Def.'s Violation Hr'g Mem. at 2) (Page ID #473). At the hearing, the district court addressed Mont's challenge and

[3]As the Government notes, Appellee's Br. at 15 n.2, "it is well-settled that federal courts may take judicial notice of proceedings in other courts of record." *Lyons v. Stovall*, 188 F.3d 327, 333 (6th Cir. 1999) (punctuation and citation removed). We do so here, where the relevant records were publicly available from the Mahoning County Courts, *see* CourtVIEW, MAHONING COUNTY COURTS, https://courts.mahoningcountyoh.gov/eservices/home.page.2.

"conclude[d] that [it did], in fact, have jurisdiction over this matter." *See* R. 116 (Violation Hr'g Tr. at 9) (Page ID #492). In explaining its conclusion, the district court first stated that it had "give[n] notice by way of a summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016." *Id.* at 7 (Page ID #490). The district court then made reference to 18 U.S.C. § 3583(i), stating that under that provision "a Court retains the power to impose a sanction for a supervised release violation beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising from its expiration."[4] *Id.* at 8–9 (Page ID #491–92). Though the district court acknowledged that, "if all things went as they should have gone, supervision would have expired on March 7th, 2017," the district court reasoned that the extra "time was, in fact, reasonably necessary because it was the actions of the defendant that caused the various extensions of time of having the supervised release violation hearing." *Id.* at 9 (Page ID #492).

The district court proceeded to sentence Mont to 42 months of imprisonment, to be served consecutively to Mont's imprisonment for his state-court convictions. *Id.* at 17 (Page ID #500). Mont timely appealed on the jurisdictional question.

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[4]For maximal clarity, we note here that this expression of the statutory rule left off a key conditional phrase. In fact, a court's "power . . . to revoke a term of supervised release . . . extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before [that term's] expiration *if*, before [that term's] expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." 18 U.S.C. § 3583(i) (emphasis added). As will be apparent, however, this accidental omission does not affect the outcome of this case.

II. DISCUSSION

A. Standard of Review

"We review de novo [a] district court's . . . determination that it had jurisdiction to revoke [a defendant's] supervised release." *United States v. Cross*, 846 F.3d 188, 190 (6th Cir. 2017).

B. The District Court's Jurisdiction

The math in this case is simple: Mont's supervised-release clock was initially set at five years. If it ticked its way down inexorably, then time would have expired on March 6, 2017, and the district court would have lacked jurisdiction to impose a violation at any later date.

But the clock's countdown was not inexorable. Two statutory provisions explain (1) how time could have been extended and (2) how the clock could have been paused. First, "[t]he power of the court to revoke a term of supervised release . . . *extends beyond the expiration of* the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration *if, before its expiration*, a warrant or summons has been issued on the basis of an allegation of such a violation." 18 U.S.C. § 3583(i) (emphases added). That is how time could have been extended. *See United States v. Ossa-Gallegos*, 491 F.3d 537, 543 n.5 (6th Cir. 2007) (en banc). Second, while a "term of supervised release commences on the day the person is released from imprisonment," that term "*does not run* during any period in which the person is imprisoned *in connection with* a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. § 3624(e) (emphases added). That is how the clock could have been paused.

This second, clock-pausing provision presents an interpretive riddle that we took on in *United States v. Goins*, 516 F.3d 416 (6th Cir. 2008): does thirty days or more of pretrial detention for a charge that results in (and is credited to) a conviction count as "imprisonment in connection with" that conviction? If so, we would understand a defendant's supervised-release clock as having been stopped during any days that defendant spent incarcerated after an indictment, at least so long as (1) that indictment resulted in a conviction and (2) that incarceration was credited as time served for the conviction. And that, in *Goins*, is what we held: "that [1] when a defendant is held for thirty days or longer in pretrial detention, and [2] he is later convicted for the offense for which he was held, and [3] his pretrial detention is credited as time served toward his sentence, then the pretrial detention is 'in connection with' a conviction and tolls the period of supervised release under § 3624." *Id.* at 417. And we explicitly rejected any "temporal limitations" for this rule, finding none in the statute's text and thus acknowledging that our rule might "require a 'backward-looking analysis'" at times. *Id.* at 422 (quoting *United States v. Morales-Alejo*, 193 F.3d 1102, 1104 (9th Cir. 1999)).

As may be clear by now, *Goins* resolves this case.[5] Mont was held for roughly ten months in pretrial detention. *See* R. 90 (Supervision Report at 1–2) (Page ID #415–16); R. 100

[5]Because it does, we need not consider the Government's alternate argument for affirmance: that the district "court's issuance of a summons before [Mont's] supervision expired" triggered an extension under § 3583(i). Appellee's Br. at 13. While it is true that the district court said during Mont's hearing that it had issued such a summons in November 2016, R. 116 (Violation Hr'g Tr. at 7) (Page ID #490), Mont contends "that there is no evidence on the record which indicates that the district court actually filed" such a summons, Reply Br. at 3. We too have failed to detect any such evidence in the record, and the Government has not pointed us

(Second Violation Report at 1–2) (Page ID #454–55). He was later convicted of the offenses for which he was held. *See* R. 100 (Second Violation Report at 1–2) (Page ID #454–55). That pretrial detention was credited as time served toward his sentence. *State v. Mont*, Judgment, No. 16-CR-555, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017); *State v. Mont*, Judgment, No. 15-CR-291, at 2 (Mahoning Cty. Ct. Com. Pl. Mar. 23, 2017). Accordingly, Mont's term of supervised release did "not run during" those ten months (nor, for that matter, during the post-conviction incarceration that followed). *See* 18 U.S.C. § 3624(e); *Goins*, 516 F.3d at 417. This means that there was still quite a bit of time left on the clock when the district court issued its warrant on March 30, 2017, R. 101 (Arrest Warrant at 1) (Page ID #458), triggering the "extension" that 18 U.S.C. § 3583(i) in turn provides.[6] The district court, in other words, had jurisdiction.

Mont seeks to avoid this result in a few ways, mostly by arguing two variants of the idea that "the district court . . . failed to take the steps that were necessary to preserve its jurisdictional authority," Appellant's Br. at 21. First, he argues that the district court neglected to mention

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to any, citing only the district court's own statement. *See, e.g.*, Appellee's Br. at 13. Nevertheless, we leave this question aside, as *Goins* requires that we affirm regardless.

[6]Of course, that extension was not itself necessary in this case, because, given the length of Mont's incarceration, there would have been time left on the clock in any event when Mont's supervised-release-violation hearing finally occurred on June 28, 2017. But that may not always be the case, as indeed it was not in *Goins* itself. *See Goins*, 516 F.3d at 418–19. In other words, the interaction between the two statutory provisions can be crucial: in some cases § 3624(e)'s having briefly paused a defendant's supervised-release clock will make the difference as to whether there was still time remaining when a court's issuance of a warrant or summons in turn triggered § 3583(i)'s extension, even though the resulting hearing itself would have otherwise impermissibly fallen "beyond the expiration of the term of supervised release," *see* 18 U.S.C. § 3583(i).

Goins or "make any finding regarding tolling, and instead relied upon Section 3583(i)." *Id.* at 22. This is essentially a forfeiture argument: that because the district court did not invoke *Goins* or § 3624(e)'s clock-pausing powers, those powers were never activated in the first place and cannot be activated now.

This argument fails for several reasons. First of all, as the Government notes, "Mont presents no authority establishing that the court was required to take affirmative steps to 'preserve' authority during a tolling period." Appellee's Br. at 16. Indeed, nothing in *Goins* suggests that a district court must invoke § 3624(e) specifically for its statutory commands to be in effect. Second, as the Government also notes, Appellee's Br. at 19, "[a] decision below must be affirmed if correct for any reason, including a reason not considered by the lower court." *United States v. Henderson*, 626 F.3d 326, 334 (6th Cir. 2010) (quoting *Russ' Kwik Car Wash, Inc. v. Marathon Petroleum Co.*, 772 F.2d 214, 216 (6th Cir. 1985)). We cannot, in other words, rule that the district court lacked jurisdiction simply because we would have explained why the district court had jurisdiction differently. Nor, third, would that kind of approach to federal-court jurisdiction fit with longstanding federal-court doctrine, which does not treat our jurisdiction as the kind of thing that can be squandered by design *or* inattention. *Cf. Mitchell v. Maurer*, 293 U.S. 237, 244 (1934) ("Unlike an objection to venue, lack of federal jurisdiction cannot be waived or be overcome by an agreement of the parties. An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review.").

Mont also offers a second spin on this necessary-steps argument: that § 3624(e) pauses the clock only when a court has first undertaken the procedures—issuing a summons or warrant—outlined in § 3583(i). He points out, for example, that "this Court has specifically rejected [§ 3583(i)] as a tolling mechanism," Appellant's Br. at 22, and argues that § 3583(i) instead "permits a delayed revocation hearing only when the district court has preserved its power, or jurisdiction, to act beyond the termination of a sentence by means of issuing a summons or warrant," Reply Br. at 6.

This argument also fails. Again, there is the problem that Mont offers no authority or explanation for why a warrant or summons under § 3583(i) would serve as a necessary precondition for § 3624(e). But more importantly, nothing in the text of the statutes suggests as much, and *Goins* itself contradicts Mont's theory. *See Goins*, 516 F.3d at 418–19 (noting that the problem presented by the case was that § 3583(i) was *not satisfied* but that § 3624(e) could nevertheless render the relevant "warrant timely," *id.* at 419). And while Mont is correct that § 3583(i) is not what we have called "a tolling provision," *see Ossa-Gallegos*, 491 F.3d at 543 n.5, that fact is irrelevant. Mont's appeal fails, rather, because § 3624(e) *is* what we have called a tolling provision.[7]

[7]That said, what the word "tolled" means turns out to be a thorny question, susceptible to two different interpretations. *See generally Artis v. District of Columbia*, — S. Ct. —, 2018 WL 491524 (2018) (addressing whether 28 U.S.C. § 1367(d) serves to pause state statute-of-limitations periods or to provide a grace period after those periods expire). Thankfully, that ambiguity is not at issue here, as the plain text of § 3624(e) makes clear that it is, more precisely, a clock-pausing provision.

What remains of Mont's argument amounts essentially to an attack on *Goins* itself and an endorsement of the D.C. Circuit's recent decision to the contrary, *see United States v. Marsh*, 829 F.3d 705 (D.C. Cir. 2016). That is fair enough: there is indeed a circuit split on this question. *Compare United States v. Ide*, 624 F.3d 666, 667 (4th Cir. 2010) (holding that pretrial detention can qualify as imprisonment under § 3624(e)), *United States v. Johnson*, 581 F.3d 1310, 1312–13 (11th Cir. 2009) (same), *United States v. Molina-Gazca*, 571 F.3d 470, 471 (5th Cir. 2009) (same), *and Goins*, 516 F.3d at 417 (6th Cir.) (same), *with Marsh*, 829 F.3d at 705 (D.C. Cir.) (holding that pretrial detention does not qualify), *and Morales-Alejo*, 193 F.3d at 1106 (9th Cir.) (same). But *Goins* is a published decision, and "a published prior panel decision 'remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.'" *Sykes v. Anderson*, 625 F.3d 294, 319 (6th Cir. 2010) (quoting *Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985)). *Goins* therefore forecloses Mont's challenge to the district court's jurisdiction.

III. CONCLUSION

Under our binding precedent interpreting federal law, the clock on Mont's supervised-release term stopped ticking the day that Mont was incarcerated in Mahoning County in connection with his eventual convictions, given that his incarceration was greater than or equal to thirty days and credited as time served for those convictions. Consequently, there was still time remaining on Mont's supervised-release clock—and therefore jurisdiction—when the

district court issued its warrant (and, for that matter, when it ultimately adjudicated Mont's supervised-release violation). We accordingly **AFFIRM** the district court's judgment.

§ 3583. Inclusion of a term of supervised release after imprisonment
(a) . . .
( )
(h) ...

(i) **Delayed revocation.**--The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

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§ 3624. Release of a prisoner

(a) Date of release.--A prisoner shall be released by the Bureau of Prisons . . .

(b) Credit toward service of sentence for satisfactory behavior.--
(1) . . .
(2) . . .
(3) . . .
(4) . . .

(c) Prerelease custody.--
(1) In general.--The Director of the Bureau of Prisons shall, . . .
(2) Home confinement authority.--. . .
(3) Assistance.--. . .
(4) No limitations.--Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.
(5) Reporting.--Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall . . .
(6) Issuance of regulations.--The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection . . .
(A) . . .;
(B) . . .; and
(C) . . .

(d) Allotment of clothing, funds, and transportation. --Upon the release of a prisoner on the expiration of the prisoner's term of imprisonment, the Bureau of Prisons shall furnish the prisoner with--
(1) suitable clothing;
(2) an amount of money, not more than $500, determined by the Director . . .; and
(3) transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence . . .

(e) Supervision after release. --A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

(f) Mandatory functional literacy requirement.--

(1) The Attorney General shall direct the Bureau of Prisons . . .

(2) Each mandatory functional literacy program shall include . . .

(3) As used in this section, the term "functional literacy" means--

(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

(C) a combination of subparagraphs (A) and (B).

(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program . . .

(5) The Chief Executive Officer of each institution shall have authority to grant waivers . . .